

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

JIMMY R. GARCIA,	§	
TDCJ-CID ID No. 1542228,	§	
Previous TDCJ ID Nos. 718029 and 1306314,	§	
SID No. 04033193,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO.
v.	§	5:13-CV-00146-C
	§	
RICK THALER, Director, TDCJ-CID,	§	
<i>et al.</i> ,	§	
	§	
Defendants.	§	ECF

**ORDER**

Plaintiff Jimmy R. Garcia, acting *pro se*, filed a complaint pursuant to 42 U.S.C. § 1983 on July 3, 2013, and was subsequently granted permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(b)(2). In this complaint, he alleged that the named Defendants were deliberately indifferent to his safety because they placed him in housing with Mexican Mafia gang members at the TDCJ-CID Smith Unit despite the fact that he is a former member of the Mexican Mafia.

On August 12, 2013, the complaint was transferred to the docket of the United States Magistrate Judge, who conducted an evidentiary hearing pursuant to *Spears v. McCotter*, 766 F.2d 179, 181-82 (5th Cir. 1998) on December 12, 2013. When Plaintiff failed to consent to the jurisdiction of the Magistrate Judge, she completed the preliminary screening pursuant to 28 U.S.C. §§ 1915 and 1915A, filed a Report and Recommendation on February 14, 2014, and transferred the complaint back to this Court. Plaintiff did not file a reply or objections to the Report and Recommendation.

The undersigned District Judge has made an independent examination of the record in this case and finds that the Magistrate Judge's findings and conclusions should be ADOPTED.

It is, therefore, **ORDERED**:

(1) Civil Action No. 5:13-CV-00146-C and all claims alleged therein are DISMISSED with prejudice as factually frivolous and for failure to state a claim.

(2) Any pending motions are DENIED.

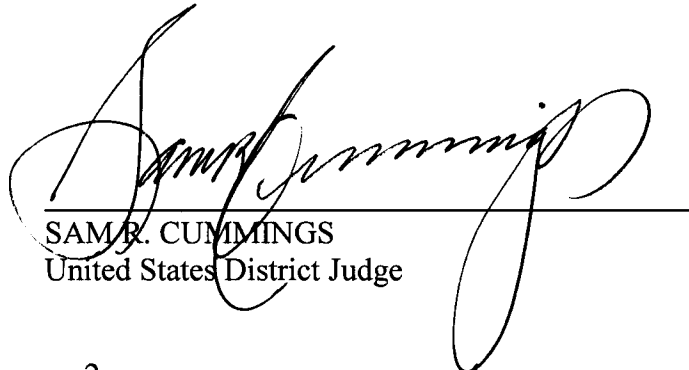
(3) The dismissal of Plaintiff's complaint does not release Plaintiff or the institution where he is incarcerated from the obligation to pay any filing fee previously imposed. *See* 28 U.S.C. § 1915(b)(1) ("Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner **shall be required to pay the full amount of a filing fee.**") (emphasis added); *Hatchet v. Nettles*, 201 F.3d 651, 654 (5th Cir. 2000) ("No relief from an order directing payment of the filing fee should be granted for a voluntary dismissal.").

(4) This dismissal shall count as a qualifying dismissal under 28 U.S.C. § 1915 and *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1996).

(5) Plaintiff is advised that if he appeals this Order, he will be required to pay the appeal fee of \$505.00 pursuant to the PLRA, and he must submit an application to proceed *in forma pauperis* and a 6-month Certificate of Inmate Trust Account at the same time he files his notice of appeal.

Judgment shall be entered accordingly.

Dated May 1, 2014.

  
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SAM R. CUMMINGS  
United States District Judge